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Attorneys for Plaintiff  
CHRISTOPHER GAHR

**ORIGINAL**

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

APR . 11 2007

at 4 o'clock and 08 min PM J  
SUE BEITIA, CLERK

**UNITED STATES DISTRICT COURT,  
DISTRICT OF HAWAII.**

LUCAS BRUNO III, CHRISTOPHER  
GAHR, FRANK ROBERT PAULSON,  
CHARLES TURNER, TOM YOUNG,

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary,  
DEPARTMENT OF HOMELAND  
SECURITY,

Defendant.

CIVIL NO. 03-00567-JM:BMK  
OBJECTIONS TO DEFENDANT'S  
JURY INSTRUCTIONS, AND  
VERDICT FORMS.

Trial Date: Apr. 24, 2007.  
Judge: The Hon. J. Michael Seabright

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Objections to Defendant's Jury Instructions -Bruno v.

Chertoff - 1

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## OBJECTION TO DEFENDANT'S INSTRUCTION NO. 20

[Items in ***bold and italic*** are those items that Plaintiff objects to.]

In determining whether the defendant discriminated against plaintiff, you must consider whether management honestly believed its justifications for discharging plaintiff. If you find that management's stated reasons were actually a pretext for race and national origin discrimination and/or retaliation, you must find for plaintiff. If, on the other hand, you believe those justifications were honestly believed by management, you must find for the defendant, *even if you believe management's justification was foolish or trivial.*

OBJECTION: Plaintiff objects to the "foolish or trivial" clause on the basis that decisions may be foolish, especially when "locals" with less qualifications (including one convicted felon) were subsequently hired. The case of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 804, 93 S. Ct. 1817, 35 L. Ed. 2d 668 (1973), states that:

"Petitioner's reason for rejection thus suffices to meet the prima facie case, but the inquiry must not end here. While Title VII does not, without more, compel rehiring of respondent, neither does it permit petitioner to use respondent's conduct as a pretext for the sort of discrimination prohibited by § 703 (a)(1). On remand, respondent must, as the Court of Appeals recognized, be afforded a fair opportunity to show that petitioner's stated reason for respondent's rejection was in fact pretext. Especially relevant to such a showing would be evidence that white employees involved in acts against petitioner of comparable seriousness to the 'stall-in' were nevertheless retained or rehired. Petitioner may justifiably refuse to rehire one who was engaged in unlawful, disruptive acts against it, but only if this criterion is applied alike to members of all races."

Here, others were hired and retained by "local" Managers, while Caucasians were treated like dog dung. The way security was handled at Maui International Airport ("OGG") was less handled to a point where more than Airport Security was affected, and having less qualified "locals" working security is a disaster waiting to happen.

Objections to Defendant's Jury Instructions -Bruno v.

Chertoff - 3

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## OBJECTION TO DEFENDANT'S INSTRUCTION NO. 22

[Items in **bold and italic** are those items that Plaintiff objects to.]

*Your duty is not to decide whether the defendant's business judgment was sound. An employer is entitled to decline to promote or to give an adverse performance evaluation to an employee for any reason that is not unlawfully retaliatory or discriminatory. As long as the employer had a legitimate, nondiscriminatory reason for taking action affecting an employee, the employer has not violated the law. You must bear in mind that an employer is entitled to make its own subjective business judgments, however misguided they may appear to you, and may overlook one employee in favor of another, select one person over the another, reassign, demote, or discharge an employee for any reason that is not illegally retaliatory or discriminatory. The relevant question is simply whether the employer's stated reasons were not true and whether the actions taken were actually intended to retaliate against the plaintiff for prior EEO activity. The fact that you may disapprove of the defendant's stated reasons in this regard is irrelevant.*

*You must bear in mind that the focus of your decision must be on the defendant's intent and motivation and not on its business judgment. The test is not whether you approve of the way the defendant did business. The test is not whether the defendant's reasons were good or bad or whether there was a more enlightened or more efficient way to operate, or whether you think what the defendant did was fair or unfair, kind or unkind, wise or unwise.*

OBJECTION: According to the Ninth Circuit Model Jury Instructions, the Ninth Circuit has not articulated a "business judgment" jury instruction. However, when it is alleged that Defendants not only fired White Mainlanders solely because Objections to Defendant's Jury Instructions -Bruno v.

Chertoff - 4

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they are “fucking Haoles”, they fired the White Supervisors who are more than qualified, so that their less than qualified and eligible “local” friends and associates could get hired. If fact, the evidence would show that they were inclined to secure the Airport the “local” way, instead of the Department of Homeland Security Washington, DC., way.

Nevertheless, under *McDonnell Douglas*, 411 U.S. 792, at 804, the standard was not whether a business judgment was used, but whether “locals” were “nevertheless retained or []hired” by the TSA Management at OGG. Until the Ninth Circuit articulates or disavows a “business judgment” instruction, Defendant’s No. 22 should not be used.

**Objections to Defendant’s Jury Instructions -Bruno v.**

Chertoff - 5

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## OBJECTION TO DEFENDANT'S SPECIAL VERDICT FORM.

[Items in ***bold and italic*** are those items that Plaintiff objects to. New items are underlined.]

### I. RACE DISCRIMINATION

1. Has the plaintiff proved by a preponderance of the evidence that the plaintiff's race (Caucasian) or national origin was a motivating factor for the defendant's decision to terminate his employment?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If you answered "NO" to question number 1, you have rendered your verdict on this count and proceed to Question 3. Skip the remaining questions, have the Foreperson sign this verdict form, and advise the Court that you have reached a unanimous verdict. If the answer to Question No. 1 is "yes," proceed to Question No. 2.

2. Has the defendant proved, by a preponderance of the evidence, that the defendant would have made the same decision not to promote to terminate plaintiff even if the plaintiff's race had played no role in the defendant's decision terminate plaintiff?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If your answer to Question No. 2 is "no," proceed to Question 3 5. If your answer to Question No. 2 is "yes," you have rendered your verdict on this count and proceed to Question 3. Skip the remaining question, have the Foreperson sign this verdict form, and advise the Court that you have reached a unanimous verdict.

Objections to Defendant's Jury Instructions -Bruno v.

Chertoff - 6

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## II. AGE DISCRIMINATION

3. Has the plaintiff proved by a preponderance of the evidence that the plaintiff's age (41 at the time) was a motivating factor for the defendant's decision to terminate his employment?

---

YES      NO

If you answered "NO" to question number 3, you have rendered your verdict on this count. Skip the remaining questions except for Question 5, have the Foreperson sign this verdict form, and advise the Court that you have reached a unanimous verdict. If the answer to Question No. 3 is "yes," proceed to Question No. 4.

4. Has the defendant proved, by a preponderance of the evidence, that the defendant would have made the same decision to terminate plaintiff even if the plaintiff's age had played no role in the defendant's decision terminate plaintiff?

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YES      NO

If your answer to Question No. 4 is "no," proceed to Question 5. If your answer to Question No. 4 is "yes," you have rendered your verdict on this count. Go to Question No. 5., have the Foreperson sign this verdict form, and advise the Court that you have reached a unanimous verdict.

## III. DAMAGES.

3 5. What sum of money, if any, do you unanimously agree will fairly and reasonably compensate plaintiff for the injuries he proved he suffered as a result of the race or national origin, or age discrimination you found? If you already unanimously found against the plaintiff, write "0".

Objections to Defendant's Jury Instructions -Bruno v.

Chertoff - 7

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Amount: \$ \_\_\_\_\_

You have completed this Special Verdict Form. The foreperson should sign and date it, and advise the court that you have reached a unanimous verdict.

DATED: \_\_\_\_\_

FOREPERSON

OBJECTION: In Plaintiff's Second Amended Complaint, he also sued for Age Discrimination as well (Count 2). Damages should reflect loss of back and front pay due to race and age discrimination. Plaintiff also asserts that Plaintiff is still eligible for double damages under the ADEA, and requests that his Special Verdict No. 2 be used to determine if Defendant's conduct in violation of the ADEA was willful.

Dated this 11<sup>th</sup> day of April, 2007

By: \_\_\_\_\_

  
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Chertoff - 8

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Dated this 11<sup>th</sup> day of April, 2007

By:

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Objections to Defendant's Jury Instructions -Bruno v.

Chertoff - 9

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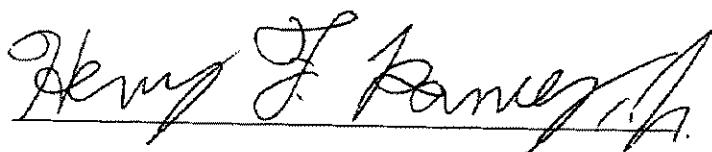
**CERTIFICATE OF SERVICE.**

I HEREBY CERTIFY that, on the date and by method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served by First Class mail and E-mail, and Fax

Thomas A Helper 5676  
Assistant U. S. Attorney  
Room 6-100 PJKK federal Building  
300 Ala Moana Blvd  
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April 11, 2007 at San Bernardino, California



Objections to Defendant's Jury Instructions -Bruno v.

Chertoff - 10

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